

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of Northern
States Power Company for Authority to
Increase Rates for Electric Service in the
State of Minnesota

**ORDER GRANTING
MOTION TO STRIKE**

This matter came before Administrative Law Judge Jeanne M. Cochran on the Department of Commerce's Motion to Strike Portion of Xcel's Initial Brief or, Alternatively, to Disregard Xcel's New Claimed Fact and ROE Proposal, and the Department's Offer of Proof filed on May 29, 2013. Northern States Power Company, d/b/a Xcel Energy, filed its response on June 5, 2013. The OAH record regarding the motion closed on that day.

Aakash H. Chandarana, Lead Regulatory Attorney-North, appeared on behalf of Northern States Power Company d/b/a Xcel Energy (Xcel or the Company).

Julia E. Anderson, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce (Department).

Based on all of the files and proceedings herein, and for the reasons contained in the Memorandum attached hereto, the Administrative Law Judge makes the following:

Order

The Department's Motion to Strike Portion of Xcel's Initial Brief is GRANTED.

Dated: June 11, 2012

s/Jeanne M. Cochran

JEANNE M. COCHRAN
Administrative Law Judge

MEMORANDUM

On May 29, 2013, the day before post-hearing reply briefs were filed, the Department filed its motion to strike a portion of Xcel's Initial Brief, or in the alternative, to disregard Xcel's new claimed fact and its new proposal regarding the return on equity (ROE). Specifically, the Department moves to strike the following language on page 90 of Xcel's Initial Brief:

~~Given the recent volatility in the DCF results for the electric company groups, the ROE ranges provide a better basis for decision than ROE point estimates. While Mr. Hevert's most updated data combined with qualitative factors surrounding the Company's investment profile continued to warrant a 10.6 percent return, we believe that, to the extent the Commission elects to incorporate this most recent trend in the electric group, these ROE ranges would indicate that an ROE of 10.25 percent would be reasonable.~~

The Department provided several arguments in support of its motion. First, the Department claimed that Xcel has introduced a new fact: namely, that the Department's DCF results show evidence of "volatility." The Department maintained that this new fact is without foundation. Second, the Department argued that Xcel's claim of increased "volatility" is inconsistent with publicly available information regarding the volatility of the stock market as measured by the Volatility Index. Third, the Department maintained that Xcel's new ROE proposal based on the alleged "volatility" lacks foundation. Fourth, the Department asserted that Xcel's inclusion of a new claimed fact for the first time in its Initial Brief is procedurally improper, and prejudices the public interest if it were to be considered by the Administrative Law Judge or the Minnesota Public Utilities Commission. The Department also made an offer of proof regarding the meaning of the term "volatility" as used by the financial industry and the actual levels of "volatility" during the relevant time periods.

Xcel responded that the Company did not intend to use the term "volatility" as a technical financial term, much less as a reference to the Volatility Index. Xcel clarified that the term "volatility" was used to convey the term's ordinary meaning. The Company noted that its use of the term "volatility" in this fashion is consistent within the context of its Initial Brief. Xcel did not object to either form of relief requested by the Department. Xcel noted that it believed it would not be prejudiced by striking the language proposed by the Department or by granting the alternative relief. Finally, Xcel stated that the issue raised in the Department's motion could have been addressed in the Department's reply brief rather than through a motion.

Based on the filings of the parties, the Administrative Law Judge grants the Department's Motion to Strike Portion of Xcel's Initial Brief. The Administrative Law Judge concludes that striking the language identified by the Department in its motion will eliminate the confusion caused by the Company's use of the word "volatility" in its initial brief. Moreover, the Company did not object to the striking of the language and stated that it would not be prejudiced if the relief were granted.

The Administrative Law Judge notes, however, that the granting of the motion is not intended to preclude the Company from arguing its position regarding ROE based on facts in the record. Moreover, in making its determination as to a reasonable ROE, the Commission is not limited to the specific ROEs recommended by the parties. The Commission has the authority to adopt a different ROE as long as it is supported by substantial evidence in the record.¹

Finally, the Administrative Law Judge agrees with the Company that the Department's Motion to Strike was not necessary. Xcel's Initial Brief is merely argument, not evidence. To the extent that a brief cites evidence not in the record, that will affect the weight that the Administrative Law Judge gives the argument. The Department could have (and did) address the issue in its reply brief. For that reason, the Administrative Law Judge strongly urges the Department to consider addressing any similar issue (in a future docket) through its reply brief alone.

J. M. C.

¹ *In re Northern States Power*, 416 N.W.2d 719, 727-28 (Minn. 1987) (holding that the Commission acted lawfully when it adopted a return on equity that differed from those proposed by the parties where the Commission's decision was supported by substantial evidence in the record).



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June 11, 2013

See Attached Service List

**Re: *In the Matter of the Application of Northern States Power Company
for Authority to Increase Rates for Electric Service in the State of
Minnesota***
OAH 68-2500-30266
MPUC PUC E-002/GR-12-961

To All Persons on the Attached Service List:

Enclosed herewith and served upon you is the Administrative Law Judge's
ORDER GRANTING MOTION TO STRIKE in the above-entitled matter

Sincerely,

s/Jeanne M. Cochran

JEANNE M. COCHRAN
Administrative Law Judge

Telephone: (651) 361-7838

JMC:dsc
Enclosure

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CERTIFICATE OF SERVICE

In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota	OAH Docket No.: 68-2500-30266 PUC E-002/GR-12-961 8
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Denise Collins, certifies that on June 11, 2013 she served a true and correct copy of the attached **ORDER GRANTING MOTION TO STRIKE** by eService, and U.S. Mail, (in the manner indicated below) to the following individuals:

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